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18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
21 Vera, Luis Javier Vazquez, and Kyle  
22 Kingsbury on behalf of themselves and all  
23 others similarly situated,

24 Plaintiffs,

25 vs.

26 Zuffa, LLC, d/b/a Ultimate Fighting  
27 Championship and UFC,

28 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**PLAINTIFFS' OPPOSITION TO ZUFFA,  
LLC'S MOTION TO SEAL PORTIONS  
OF PLAINTIFFS' REPLY IN SUPPORT  
OF THEIR MOTION TO CHALLENGE  
ATTORNEY-CLIENT PRIVILEGE (ECF  
NO. 340) AND RELATED EXHIBITS**

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Zuffa LLC’s Motion to Seal Portions of Plaintiffs’ Reply In Support of Their Motion to Challenge Attorney-Client Privilege and Related Exhibits (ECF No. 342, the “Motion to Seal”) asserts attorney-client privilege and confidentiality as the bases for sealing previously redacted portions of Plaintiffs Reply in Support of Their Motion to Challenge Attorney-Client Privilege (ECF No. 340<sup>1</sup>, the “Reply”). But the documents at issue<sup>2</sup> in Plaintiffs’ Motion to Challenge Attorney-Client Privilege (ECF No. 320, the “Motion to Challenge”) are not privileged, and any references to those documents in Plaintiffs’ Reply should not be sealed on that basis. At a minimum, since the asserted privilege is in dispute, Plaintiffs believe it would be premature to seal the documents on that basis before the Court has ruled on whether the documents are in fact privileged. Plaintiffs take no position as to whether the Challenged Documents contain confidential information and do not oppose sealing references to them in the Reply solely on the limited basis that they have been designated Confidential by Zuffa, should the Court find those designations appropriate.

Zuffa also seeks to seal Exhibits 1-4<sup>3</sup> to the Declaration of Kevin E. Rayhill in Support of Plaintiffs' Reply in Support of Their Motion to Challenge Attorney-Client Privilege (the "Rayhill Declaration") on the basis that they contain confidential information. Motion to Seal at 2-3. As with the Reply, Plaintiffs take no position as to whether the Exhibits contain confidential material, and do not oppose sealing them on that basis should the Court find those designations appropriate.

## II. ARGUMENT

**A. Because The Challenged Documents Are Not Privileged, References To Them In Plaintiffs' Reply Should Not Be Sealed On That Basis.**

Plaintiffs refer the Court to their Motion to Challenge and their Reply, which Plaintiffs incorporate herein by reference, for detailed arguments as to why the Challenged Documents are not privileged. To briefly summarize, Zuffa’s in-house counsel were intimately involved in Zuffa’s business

<sup>1</sup> ECF No. 340 is a corrected version of the Reply originally filed at ECF No. 336.

<sup>2</sup> ECF Nos. 322-2 through 322-15 (collectively, the “Challenged Documents”).

<sup>3</sup> ECF Nos. 336-1, 336-2, 336-3, and 336-4, collectively, the “Reply Exhibits ”).

1 matters on a daily basis. The Challenged Documents contain only descriptions and discussions of  
 2 Zuffa's business matters including information about Zuffa's contract negotiations and commercial  
 3 strategies. They neither seek nor convey any legal analysis or advice and are therefore not privileged. *See*  
 4 *Cung Le v. Zuffa, LLC* ("Le v. Zuffa"), 2016 U.S. Dist. LEXIS 69813, \*23-24 (D. Nev. May 26, 2016)  
 5 (holding that documents that merely "report[] the parties' negotiating positions and contain[] no legal  
 6 analysis or advice," or which "relate to the negotiating parties' commercial strategies and tactics . . . are  
 7 not privileged"). Because the Challenged Documents are not privileged, any references to them in  
 8 Plaintiffs' Reply cannot be sealed on the basis of attorney-client privilege.

9 The Court has scheduled a hearing on Plaintiffs' Motion to Challenge for February 7, 2017.  
 10 Until the Court has ruled on this issue, sealing the documents on the basis of privilege would be  
 11 premature.

12 **B. Plaintiffs take No Position As To Whether Exhibits 1-4 To The Rayhill Declaration  
 13 Contain Confidential Information.**

14 The Reply Exhibits were produced by Zuffa with Confidential or Highly Confidential  
 15 designations as authorized by the Revised Stipulation and Protective Order (ECF No. 217). These  
 16 exhibits show Zuffa's In-House counsel Michael Mersch (Exhibits 1 and 2) and Lawrence Epstein  
 17 (Exhibits 3 and 4) engaging in business-related activities in the normal course of their day-to-day  
 18 activities at Zuffa that were similar to—if not identical to—the activities discussed in the Challenged  
 19 Documents. Indeed, Zuffa's Motion to Seal confirms that this was the case: "Plaintiffs' Reply includes,  
 20 makes reference to, and discusses quoted sections from four exhibits that contain confidential  
 21 information regarding Zuffa's decision-making and business strategies and its internal business  
 22 operations." Motion to Seal at 1. Tellingly, Zuffa has not asserted privilege over the Reply Exhibits,  
 23 despite the strong similarities to the Challenged Documents that occasioned Plaintiffs' Motion to  
 24 Challenge in the first place. Indeed, like the Challenged Documents, the Reply Exhibits include  
 25 summaries of Zuffa's negotiating positions with respect to fighters (Exhibits 1 & 2) and sponsors  
 26 (Exhibits 3 & 4).

27 Plaintiffs do not oppose Zuffa's designation of these documents as Confidential, just as they did  
 28 not oppose designating the Challenged Documents—which also contain "confidential information

1 regarding Zuffa's decision-making and business strategies and its internal business operations" — as  
2 confidential, should the Court decide these designations are appropriate.

3 **III. CONCLUSION**

4 For the reasons stated above this Court should deny Zuffa's Motion to Seal to the extent that it  
5 asserts attorney-client privilege as the basis for sealing. Plaintiffs take no position regarding Zuffa's  
6 designation of the documents as Confidential, and do not oppose sealing the documents on that basis,  
7 should the Court find Zuffa's designations appropriate.

8  
9  
10 Dated: January 31, 2017

Respectfully Submitted,  
11 JOSEPH SAVERI LAW FIRM, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of January, 2017 a true and correct copy of  
**PLAINTIFFS' OPPOSITION TO ZUFFA, LLC'S MOTION TO SEAL PORTIONS OF**  
**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO CHALLENGE ATTORNEY-**  
**CLIENT PRIVILEGE AND RELATED EXHIBITS** was served via the District of Nevada's ECF  
system to all counsel of record who have enrolled in the ECF system.

By:

/s/ Kevin E. Rayhill